

A Sacrament of Intellectual Self-Gratification

Giorgio Agamben swearing an Oath of his own State of Exception

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Abstract

Agamben claimed that the experience of language, as it is manifested in the oath, precedes and gives rise to religion, law and politics, and therefore should be seen as a crucial element of the human process. It is my contention to argue here that a particular aspect of Agamben's own language suffers from substantial and conceptual flaws and self-assertive opinions on language and oath. They may put in question his own engagement with the textual evidence and philosophical literature, which makes his own text self-recommending and self-gratifying. In addition, he relied on obscure authors and obsolete interpretations and he failed to engage the relevant issues in the relevant literature that are crucial to his argument. More importantly, Agamben's argument on a certain impotence of language offers little suggestion, except calling upon philosophical obfuscation, to break down the state of exception in the current post-modern condition and avoid the technical apparatuses of the sacrament of power that led first to oath, and then to religion, law and politics.

Keywords: Giorgio Agamben, language, oath, sacrament

The critique of a certain intellectual trend in fabricating academic reputation out of empty and vain parlance may apply in general to a part of the massive writings of many highbrow intellectuals and scholars that are all too often among us nowadays. In this article, an analysis of Giorgio Agamben's writing on the oath is taken as an illustrative example of this writing style, insofar as it is instantiated by a particular scholar in one of his writings, without taking issue with him individually and leaving it to others to discuss his other works, as they have already attracted lavish attention in current scholarship. After a topical introduction reconstructing Agamben's main argument, a number of substantial flaws and flawed representations are levelled in his text. As often noted in relation to many of his other writings, again in this text not only he seriously overlooked, but also misused and abused without proper acknowledgment previous evidence in relevant literature and scholarship, which led him to more serious conceptual flaws in his understanding of the ethical and political implications of the oath. This nevertheless does not prevent him from

emerging as an emblematic highbrow figure in the state of exception of the current post-modernist condition.

In *The Sacrament of Language*, Agamben's central concerns converged in the 'sacramental oath of language' as a verbal utterance of a theological and political purpose.¹ Building on the double entendre of "oath" (*sacramentum*) as both a religious 'sacrament' and a civil 'covenant',² Agamben tried to offer what he described as a philosophical *archaeology of the oath* that is supposed to connect words and things and convey social forms such as religion, law and politics. His demonstration is intended against a long scholarly tradition, 'which sees the oath as a recourse to religious power to guarantee the efficacy of the law'.³ He tried to reverse the usual logic of traditional explanation by which oaths are constantly explained with reference to the 'magico-religious sphere', to a presupposed 'divine power' of the gods invoked, or to 'religious forces that intervene to guarantee its efficacy by punishing perjury'.⁴ It is of no use, for Agamben, to assume that the gods originally functioned as omniscient witnesses who would punish false speech. Rather, Agamben suggested, the sacral or magical-religious stage in human history is secondary to the oath, even at a time when humans are supposed to swear to God because they fear God's power or divine retribution.

Because language is ambiguous and cannot bind speakers to their words, Agamben argued, the oath ought to function as a binding force that unites humans and transforms the words we speak into something far more important and 'more vital than the utterances in which they are cast'.⁵ In the course of Agamben's argument, the oath seems to 'result from the conjunction of three elements: an affirmation, the invocation of the gods as witnesses, and a curse directed at perjury'.⁶ The ancients made even the gods swear by sacred objects, or to something higher, and then remained 'bound by their very words'.⁷ In this sense, 'the oath is required as a self-reference of language to language within language before any putatively reliable reference to the world can take place'.⁸ No doubt, Agamben believe the oath is a foundational experience of language, through which humans subject themselves and their destiny to the binding and unifying force of language that makes the act of being human possible.

The 'proper context of the oath is among those institutions, like the *fides*, whose function is to performatively affirm the truth and trustworthiness of speech'.⁹ Swearing an oath to God, Agamben proposed, it is to invoke and even take part in the godlike power of language to unite words and things, that is, 'the very signifying power of language' to name the world.¹⁰ Based on this experience of language, Agamben believed, oaths simultaneously create and instantiate political authority and both religion and law are born 'to tie speech to things and to bind, by means of curses and anathemas, speaking subjects to the veritative power of their speech, to their oath and to their declaration of faith'.¹¹ In other words, before being a sacrament of power, where religion, law and politics come together to ground social life often through violence, 'the oath is a consecration of the living human being through the word to the word' and 'can function as a sacrament of power insofar as it is first of all the *sacrament of language*'.¹²

Substantial flaws

An unusually high number of journals and networks have reviewed and examined Agamben's book, in which his followers remain subservient to a particular aspect of Agamben's own language that is only venturing out to make connections with other philosophical texts. They often suffer, as his critics have stated with reference to an edited collection on Agamben's texts, from 'blandly assertoric reasoning', 'arch mannered expression', 'relentless boosterism', and 'constant reminders of Agamben's excellence, genius, novelty, or claims about the enigmatic and stunning effects of his writing'.¹³ Arguably, such attitude may betray Agamben's own engagement with the textual evidence and philosophical literature, which makes his own text self-recommending and self-gratifying.

At first glance, *The Sacrament of Language* can appear as 'full of fascinating ideas' and may 'encompass a great breadth of scholarship',¹⁴ and even a 'characteristic polymathic erudition',¹⁵ but the text is meandering in what is thought of as a 'difficult philosophical prose' and 'rhetorical cast of mind'.¹⁶ In the end, it does not really say much and seems like a very long classical literature review, as if drawn from a PhD qualifying exam essay question. It criticises a lot of what other authors have said about the relationship between social practices of language and religion, but does not really reach a point that is different from what is said in the first pages. Overall, one may not find this book to be a smooth read that logically connects point by point. Rather, it seems to jump from one point to the next and one commentator is even tempted to return to Agamben the criticism he made to the received divisions between magic, religion, law and politics that he supposed to have hitherto governed and often severely bungled the study of the oath.¹⁷ Namely, Agamben's archaeology of the oath may typically illustrate how the disputes at issue falsify their own evidence to the extent that the flaws come to mirror each other in the text without their author being aware of the fact.

Agamben's argument can also appear original and occasionally persuasive, but relies on antiquated scholarship. To discuss matters of oaths, their origins, the specificity of human language, the never-ending task of anthropogenesis, and their implications for religion, law and politics in human society, he crammed his writing with antiquated Latinisms and remained fixated upon classical Greco-Roman and Judeo-Christian textual evidence and older philosophical literature. He suggested that new readings of this literature offer purchase on understanding ~~that a deeper~~ significance of the oath. However, running too much and for too long on a meta review, he did not tie that review to reality, to concrete case studies, to an explanation for how these new readings actually help in understanding the reality of oaths and language.

In so doing, not only did he not engage with up-to-date literature when making many of his core arguments, but also his intent upon critiquing his own intellectual inheritance ends up reproducing in another form, rather than surmounting, the same modes of thought with which he engaged so studiously.¹⁸ Whether with his arguments about oaths, curses, blasphemy, the

nature of God and God's name, or with his awkward discussion on the oath as a speech act, or performative statement, Agamben seemed to rely on a bunch of discredited scholars who subscribed to obsolete theological, mythographic, juridical, and philological theories. Contemporary scholars of language, belief, religion, magic, mythology, history and antiquity may often frown upon many of his far-fetched arguments and his invocation of obscure authors and obsolete interpretations.¹⁹

Agamben is notoriously known for his 'zones of indistinction', the tendency towards identity of humans and animals, life and politics, law and fact, rule and exception, order and anomie.²⁰ To ground another of such zones, the indistinction between oath, language, and God's name, Agamben referred as usual to obscure texts and obsolete interpretations. He willingly turned, for instance, to the nineteenth-century comparative philologist Max Müller and his *Lectures on the Origin and Growth of Religion* delivered and published in 1878,²¹ or to Nietzsche's one-time teacher, the nineteenth-century philologist Hermann Usener and his monograph on 'the names of gods' (*Götternamen*) published in 1896.²² Ernst Cassirer, in his *Language and Myth*, had already considered both of them in his observations on the place of language and myth in the pattern of human culture, the evolution of religious ideas and the problem of God's names.²³ Max Müller represented mythological and magical-religious concepts as a 'malady of language', based on the influence that linguistic paronymy, polysemy, and ambiguity of every kind does exercise necessarily on thought. Herman Usener insisted on the concept of 'special gods' (*Sondergötter*) that preside over singular activities and singular situations as a divinization of the very event of the nomination of the singular activity and situation, which isolates and renders recognizable a special 'momentary god' (*Augenblicksgott*).

Some strong claims of Agamben's archaeology of the oath are drawn heavily from the seventeenth-century German jurist Samuel Pufendorf, who dedicated to the oath a whole chapter of his *Law of Nature and Nations* published in Latin in 1672 and in 1710 in English translation. Although without proper acknowledgement, Pufendorf's account has been important for the ways in which Agamben argued that the oath, defined by the correspondence between words and actions, relates human language to the paradigm of divine language.²⁴ To this aim, he turned to first-century Hellenistic Jewish philosopher Philo Judaeus, who 'put the oath into constitutive relation with the language of God ... the being whose *logoi* are *horkoi*, whose word testifies with absolute certainty for itself', which allowed Agamben to consider the oath of men as 'the attempt to conform human language to this divine model, making it, as much as possible, *pistos*, credible'.²⁵ More importantly, Agamben deliberately confused 'bare assertions' with 'language itself' in his own alteration of Pufendorf's statement, which allowed him to claim the necessity and legitimacy of the oath, as 'guaranteeing and confirming not only pacts and agreements among men, but also more generally language itself'.²⁶

To further ground the binding indistinction between language and the world, Agamben claimed that the oath does not merely compensate for a gap

between words and things.²⁷ The oath, he argued, is able both to distinguish and to articulate life and language, allowing them to come into being simultaneously in its pure performance.²⁸ To this aim, he indecently abused of Lévi-Strauss's authority, in particular when he claimed that 'Lévi-Strauss takes up and develops in a new way the theory of Max Müller who saw in mythology a sort of malady of consciousness caused by language'.²⁹ Although certainly 'in a different sense', he blatantly threw over Lévi-Strauss 'the opaque shadow that language casts on thought',³⁰ which actually characterized Max Müller's thought,³¹ not Lévi-Strauss's, as Agamben deliberately misread. Agamben could be reminded here that the thrust of Lévi-Strauss's legacy is precisely to bring us in the opposite direction, against such obscure authors and obsolete interpretations as Max Müller's 'malady of language'.³²

In addition, Agamben seems not interested to know that among other things Lévi-Strauss also argued specifically that language is an all-encompassing model for the more general principle of reciprocity exchange and social communication.³³ Oddly enough, Agamben turned instead quite seriously to theology, in particular in the form of the argument that Christian theologians formulate as a *communicatio idiomatum* to define the communication between the properties of the divine nature and those of the human nature that are hypostatically united in Christ.³⁴ In an analogous sense, Agamben spoke of a *communicatio idiomatum*, 'by means of which the language of men communicates with the creative word of God', which takes place, according to the Cabballists, in the name of God, and especially 'in the oath, in which God swears by himself and men on the name of God'.³⁵ What he meant by God is the word of God that reveals itself in the *logos*, which allowed Agamben to specify further the meaning and function of the oath as the certainty of faith in the certainty of the name of God.³⁶ Hence, 'the word of God is the oath', a pure experience of language, an act of naming that unites words and things into a pure and bare existence. 'God is the oath-taker in the language of which man is only the speaker, but in the oath on the name of God the language of men communicates with divine language'.³⁷

Notwithstanding inadequate acknowledgment of Cassirer's inquiries, deliberate alteration of Pufendorf's quotations, and blatant abuse of Lévi-Strauss's authority, as his critics argue,³⁸ the evidence Agamben presented in the readings of such obscure texts may not be sufficiently justified to establish the primordial indistinctions he needed. Even a great admirer and faithful translator of Agamben's book, as he stated in his own blog notes, could not seriously find 'any kind of rhyme or reason' to these far-fetched references.³⁹ Although Agamben believed that since then, 'there have been no comparably relevant contributions to the question',⁴⁰ no one today would rely in the same way on these obscure texts and one may wonder if they can be used so uncritically.

It is nevertheless in this perspective that he proposed to 'reread the theory of performatives or speech acts', which, he unashamedly believed, 'in the thought of the twentieth century represent a sort of enigma, as if philosophers and linguists were coming up against a magical stage of language'.⁴¹ Again, he

undoubtedly believed that ‘linguistics is not in a position to give an account’ of the gesture ‘by means of which the one who speaks assumes language in a concrete act of discourse’ and which ‘determines the extraordinary implication of the subject in his word’.⁴² He believed that it is in this ethical relation that the ‘sacrament of language’ takes place, but this is surprising even for Agamben’s enthusiastic followers as they note a double move in recent studies to account for oaths. The first is to mobilize a pragmatics and analytical philosophy of performative speech acts, but as I show in the course of this discussion, it is no wonder that the speech acts theorists, relied upon for *How to Do Things with Words*,⁴³ made no sense at all to Agamben. The second is to insist on ‘the situated nature of the use of oaths, which means that part of the point is to avoid undue metaphysical presuppositions or disavowed anachronism, but this sort of historical polemic is again foreign to Agamben’.⁴⁴

In contrast, to ground the oath as a speech act, or a performative rather than a constative statement, he turned instead to nineteenth-century classical philologist Rudolf Hirzel,⁴⁵ who observed that the testimony at issue in the oath differs essentially from testimony in the proper sense, like that of a witness in a trial, because ‘it cannot be contested or verified in any way’.⁴⁶ On this ground, Agamben maintained that ‘what is decisive in every case is that in the oath it is not in any way really a matter of a testimony in a technical sense, because unlike every other conceivable testimony, it coincides with the call and is accomplished and exhausted together with it’.⁴⁷ This view may not be sufficient, however, to think the illocutionary forces that manifest themselves in the oath as performative acts of faith and belief,⁴⁸ to which I will return later again.

Perverted representations

At the outset, a lack of conceptual differentiation may have pushed Agamben to confuse articulation and indistinction between oath and language, between oath and God, between life and language, or between what he referred to as the pure experience of language and the pure existence of human beings. Even in the readings of the very classical and obscure authors he used, he ought to realise that they often ‘articulate’ certain facts that remain nevertheless ‘distinct’, albeit ‘corollary’ of one another. Similar objections are levelled against Agamben’s equation of law and curse and the various equations of the oath with blasphemy, promises or perjury.⁴⁹ All the same, Agamben confused the indistinction between words and things or actions as it is manifested in the oath with an aspirational view of the oath. After all, the oath-maker wants to live out the oath based not on the apprehension of bad consequences should they fail to do so, but rather out of an aspiration that their exchange partner could see that they can match what they say with what they do.⁵⁰ Similar zones of indistinction, including further aspirational articulations between humans and animals, life and politics, law and fact, rule and exception, or between anomie and order, are central to the whole of Agamben’s workings, but a mutually constitutive relationship and a particular form of aspirational

correlation between some concepts does not mean that they occupy a zone of indistinction.

Most of Agamben's works are in one way or another bearing upon ongoing considerations about secularization and secularism,⁵¹ as he constantly considered 'earlier religious traditions and their continuing influence through the inertia of political institutions and practices, despite important and pronounced breaks and transformations'.⁵² What attracted Agamben's attention is 'the Western prejudice that social life emerges from or amid a primordial religiosity, and that religion and law are social necessities'.⁵³ According to Agamben, the 'scientific mythologem' of the primordiality of the sacred is a tradition that remains central to modern anthropology, linguistics, philology, as well as legal and religious history.⁵⁴ The main argument is that divine sanction of perjury is wrong and that human history proceeding from the sacred realm to rational juridical and scientific codification of primitive beliefs is a myth.

While at first glance this may sound interesting and persuasive, the problem is that most scholars and theorists of language, law, politics, religion, ethics and philosophy might well find Agamben's essay overly reductive, while further arguments against the alleged religious origins of the oath emphasize awareness of the fallacy of the primordiality of the sacred and the deep significance of language.⁵⁵ This is to suggest that Agamben's main thesis does not hold up because what he claims to be doing is much ado about nothing new. Overall, the biggest problem is that *The Sacrament of Language* simply did not say anything new. Such an understanding is obvious today and there is nothing new or groundbreaking in basically arguing that there is no primordiality of religion and there is a deep significance of language that impacts the fundamental organisation of society.

Aiming at modern audiences, Agamben scattered many vacuous statements throughout his essay. Commentators often notice his repeated reminders that 'the claim often presented in literature that in archaic societies law and religion were interlinked and the development of civilisation led to the separation of law and religion as separate spheres is false and derives from the insistence of modern authors to project their views of religion on ancient and primitive societies'.⁵⁶ This is more than a problem of vacuity. After all, who does project yet one's own preconceived notions and customary distinctions of religion to understand ancient cultures and societies? Does anyone today actually think that religion was once something essential, which can still be regarded today as epiphenomenal to the workings of law and politics? It is certainly hard to believe that Agamben can create strawmen like that among contemporary scholars of religion, law and politics.

Agamben can be reminded that from the beginning of the twentieth century, influential authors like Emile Durkheim and Marcel Mauss once argued the close relationship of religious concepts to social phenomena, including oaths. For Durkheim, religion is nothing more than 'a unified system of beliefs and practices relative to sacred things, that is to say, things set aside and forbidden, beliefs and practices that unite into one single moral community

called a Church, all those who adhere to them'.⁵⁷ In particular, following Marcel Mauss, one may say that the oath is like those 'total social facts' that involve or 'set in motion' the totality of society and its institutions.⁵⁸ Like oaths,

All these phenomena are at once juridical, economic, religious, and even aesthetic and morphological. They are juridical because they concern private and public law, and a morality that is organized and diffused throughout society. They are strictly obligatory or subject simply to praise or blame. They are political and domestic at the same time, relating to social classes as well as clans and families. They are religious in the strict sense, concerning magic, animism, and a diffused religious mentality. They are economic....⁵⁹

Unfortunately, Agamben repeatedly made sweeping statements and unsubstantiated generalisations about scholars in general, while eschewing the argument by noting that there is nothing in the earliest recorded legal sources to substantiate the oath as more or less religious, or more or less juridical. Agamben's failure to follow basic academic conventions may come as a surprise to no one who is familiar with his writings, but his repeated unreferenced appeals to 'scholars' are problematic. From the beginning to the end, his text is peppered with such things as 'the majority of scholars', 'all the sources and scholars seem to agree', 'shared by modern scholars', 'the imagination of scholars' that tend to cite, to consider or to treat, 'the opinion very often repeated by modern scholars', 'scholars have constantly explained', 'about which scholars never stop debating', and so on.

In turn, apart that Agamben contrived his bright ideas from Cassirer's observations on the place of language and the evolution of religious ideas, he took over the bulk of his sources almost exclusively from Emile Benveniste and Georges Dumézil, and in each case not always properly acknowledged. Surprisingly, however, while he devoted most of his highbrow endeavor to exploring the etymologies of the oath, Agamben could not realise that since the 1960s both Benveniste and Dumézil were precisely among the first to differ from 'the majority of scholars' that he blithely fabricated and scornfully disparaged. His confession that he did not fully understand 'the epistemological locus and the historical foundation' of their ideas,⁶⁰ then, came as no surprise.

What Dumézil called Indo-European 'tripartite ideology' was 'not necessarily attended, in the life of a society, with the *real* tripartite division of that society', but on the contrary, wherever observed, it represented 'nothing than an ideal and, at the same time, a way of analyzing and interpreting the forces that regulate the course of the world and the life of humans'.⁶¹ At the same time, Benveniste demonstrated how particular languages have 'reorganized their systems of distinctions and renewed their semantic apparatus', endeavouring to 'harmonize the divergences in the technical usages' of the vocabulary terms of what he called Indo-European institutions, 'restore a unity dissolved by processes of evolution, and bring buried structures to light'.⁶² More to the point, Benveniste reconstructed almost single-handedly the evolving context of the vocabulary terms of Indo-European concepts such as religion and superstition, faith and the sacred, credence and belief, oath and vow, prayer and supplica-

tion, libations and sacrifices, signs and omens, and so on. He demonstrated the extent to which they were not ‘religious’ in nature, but became specialised in ‘religion’ at the cost of profound transformations.

Benveniste aimed to ‘explain significations, leaving to others the problems of designation’, expecting that historians, sociologists and philosophers like Agamben could see what use they can make of his analyses, ‘precisely because therein no extra-linguistic presuppositions have intruded’.⁶³ Similarly, Dumezil limited himself to ‘observing primary data in areas genetically related’, such as the oldest traditions that we know are at least partially of an Indo-European legacy, then, by comparison, ‘going back to secondary common prototypes’ that ‘could make it possible to glimpse the main lines of their ideology’.⁶⁴ Only in this way, both Benveniste’s and Dumézil’s investigations may allow us to push back beyond classical sources and try reasonably to reach what Dumezil called ‘the oldest history and the furthest fringe of ultra-history’ of which there are no records.⁶⁵

By contrast, rather than taking an archaeology of the oath to explore further language, religion, society, law and politics, Agamben obscured them altogether in a final gesture of self-gratifying sacrament. This can be shown even if only in contrast with a single paper on the transformational history of religious meanings and ideologies,⁶⁶ already published long before Agamben’s *Sacrament of Language*. Agamben should have found in that paper almost point by point all the details of the sources and interpretations he used almost a decade later when he proposed his ‘archaeology of the oath’.⁶⁷

Conceptual flaws

Agamben ought not to realise the distorting effect of the very language he used to refer to religion and the sacred. A common anthropological concern is that the language we use accomplishes a normative work, changing the way we think of what we call ‘religion’.⁶⁸ It is not only that Agamben may have asked the wrong questions, made the wrong assumptions and arrived at the wrong conclusions, but he also universalised, reified and essentialised religion, often imposing religious concepts when they do not relate or even exist. Anthropologists have long argued that ‘religion cannot be taken uncritically to imply [a] single, unifying, internally coherent, and carefully programmed set of concepts, rituals and beliefs’.⁶⁹ Even the more technical term of the sacred cannot be taken uncritically to imply a quality of discrete places, objects, times, practices, or persons, each requiring specific conduct.⁷⁰

The sacred is rather constructed as a unitary domain where an external, transcendent power is essentialised. The definition of the boundaries between the sacred and the profane is a political act that creates a fluid, malleable situation of liminality, in which social hierarchies may be reversed, the social order may be temporarily dissolved, and new institutions and traditions may be established. The rites of passage, liminality and the pivoting of the sacred have long since become key anthropological concepts in the study of religion

and ritual.⁷¹ They provide the extraordinary processual conditions to think how ritual performance introduces an intermediate stage for transition and transformation, which produce and reproduce the sacrament of language, law and politics, and the politicisation of faith, oath and religion.

Similarly, scholars of religion argued it as a cumulative tradition that ‘refers in a synthetic shorthand to a growing congeries of items each of which is real in itself but all of which taken together are unified in the conceptualizing mind by processes of intellectual abstraction’.⁷² Anthropological reflections also present religion as a combination and particular cumulative expression of universal categories of social practice and discourse, which are intuitively recognised as ‘elementary particles’ of religious behaviour, such as ‘prayer, song, physiological exercise, exhortation, recitation of texts, simulation, touching things, taboo, feasts, sacrifice, congregation, inspiration, and symbolism’.⁷³ Like faith and oath, they may not be essentially religious and they may all have their secular variation. However, ‘all having the same general goal, all explicitly rationalized by a set of similar or related beliefs, and all supported by the same social group’, they all serve as ‘building blocks’ for a by-product that becomes specifically religious.⁷⁴ Any group may circumscribe and prioritise certain elements over others in a set of rituals and beliefs, and any particular religion may differ from any other particular religion in the cognitive selection and organisation of the ‘building blocks’ of religious behaviour.

Not only Agamben ignored anthropological reflections but also more specialized critical approaches. Critical scholars of religion had already rejected the theological assumptions of traditional religious studies that religion can be thought somehow to predate and pervade all human actions, rather than something presumed to be the result of human action.⁷⁵ They precisely criticise the use of the label ‘religion’ to describe the centrality of belief and the sacred as well as the authority of believers to take their experience, or the interpretation of their experience, in explaining what religion really is.⁷⁶ They attempt to ground the study of religion in the recognition of humans as historical social beings and they insist on re-describing religion in terms of social forces within various historical, legal, moral, economic and political contexts and manifestations.

The critical argument that there is nothing essentially religious or sacred and that religion cannot be a stand-alone or *sui generis* category is paralleled in the cognitive approaches to religion that attempt to explain how human minds acquire, generate and transmit religious thoughts, practices and schemas by means of ordinary cognitive capacities.⁷⁷ Cognitive approaches provide a historical, evolutionary constitutional framework that may contextualise the very idea of religion and uncover the empirical aspects of the permanence of the sacred in law, politics and society. Such a framework is precisely what Agamben claimed for his *arché* that cannot ‘be situated either in a [prehistorical] chronology or even beyond it in an atemporal metahistorical structure’, but as Dumezil ironically suggested, in the hominid neuronal system.⁷⁸ In this sense, cognitive approaches should have been quite instrumental for any archaeology

of the oath and may have allowed Agamben to explore evolutionarily Dumézil's 'oldest history and the furthest fringe of ultra-history'⁷⁹ to which Agamben remained again totally impervious, unless he addressed it in rather messianic and mystical terms.

Religious concepts and representations may be non-functional in terms of survival, but they emerge and persist as an unintended consequence of evolved cognitive architectures because they transcend the otherwise modularity of ordinary, normative ontological expectations. They are constructed out of human cognitive mechanisms that are functional outside of the context of religion and involve the very same evolved mental predispositions, social livings, information exchanges and inferential processes as non-religious beliefs and practices, and no other.⁸⁰ They are simply successful because they 'excite' the mind and they have a rich potential for generating more strategic inferences.

In this sense, anthropomorphism in regard to the supernatural world is not a mistake but rather a 'good bet',⁸¹ especially as supernatural agents and entities are represented as having *minds* rather than *human* features in general. Concept formation, attention to exception, reciprocity exchange and the notion of agency are among the most significant inference systems of the human mind. In particular, a mental mechanism of hyperactive agency detection, whose function is to identify the activity of agents, may contribute to belief in the supernatural. The concept of supernatural agency as a fairly reasonable extrapolation of human agency is 'the most culturally recurrent, cognitively relevant, and evolutionarily compelling concept in religion'.⁸²

Religion, law and politics, as they are manifested in belief, faith and oath, are parts of the same culture-dependent cognitive set of systematic relationships, which form a higher level of ideational system of organized knowledge, morality and belief, which anthropologists still label 'culture', and which is based on cultural learning of symbols and codes of behavior.⁸³ What is at stake in the oath is not language, but rather the anthropological concept of 'culture' that provides a higher all-embracing language and complex grammar of rules for action and thought that allow people to meaningfully define their world, structure their experience, interpret their perceptions, express their feelings, make judgments, formulate acts, and choose between alternatives.⁸⁴

Obviously, Agamben failed to engage the relevant issues in the relevant literature, which might have allowed him to address the possibility that concepts of binding and religion emerge out of core human concerns. To his discredit, this failure prevented him from addressing not just how the concept of the oath became 'the sacramental bond that links the human being to language',⁸⁵ but how religion has become closely tied to the concept of binding people together in a faith of God and supernatural entities.

Speech acts and acts of faith and oath

Another of acclaimed Agamben's fascinating ideas is his belief that the oath is a quintessential proto-juridical and proto-religious act, which precedes the

traditional social forces of both law and religion and refers instead to a mystical binding feature of language that links words with things and actions. Calling to ‘leave aside mythical definitions, which seek an explanation outside of language’, Agamben claimed that ‘what is at stake is the relationship between words and facts (or actions) that defines the oath’.⁸⁶ He sought so far to reconstruct the status of the oath as representing in language a remnant of an archaic stage, which is supposed to allow understanding in a new light of the theory of what he called performatives.⁸⁷

Long before Agamben saw in the oath a mystical binding speech act, the argument is already explored in full,⁸⁸ almost a decade before *The Sacrament of Language*.⁸⁹ The oath and similar concepts of belief and faith are more specifically and quite adequately grounded in analytical philosophy, linguistic pragmatics and speech acts theory proposed by John Austin in his famous lecture series of *How to Do Things with Words*, and subsequently elaborated and refined by John Searle and other scholars.⁹⁰ On these grounds, it is well established that the forces at work in the certainty of faith and in the certainty of oath are not mystical but illocutionary. In addition, Benveniste’s etymologies of Indo-European terms are reconsidered, specifically those referring to the notions of faith and confidence, oath and pact, trust and fidelity, creed, belief and religion, credit and confidence, credence and credibility, which all originate in the same lexical fields. The notions conveyed by the comparative analysis of the semantic meanings of these terms allow us to posit that they are part of discursive practices and that they lend themselves to interpretation in the same way as any performative speech act.⁹¹

At the outset, these terms convey a propositional act, the fact of believing or swearing or trusting, similar to a ‘locutionary’ act. According to John Austin’s felicitous formula, this is like a ‘thing done with words’, a practice or a behaviour that like any utterance has a meaning and a reference, which ‘is a part of the doing of an action, which again would not normally be described as saying something’.⁹² In other words, the act of believing or swearing is a behavioral practice that produces in itself, in its own utterance, a fact. Furthermore, accompanied by a dictum in the form of a prayer or an oath and in conjunction with suitable verbal forms, *within* the fact of believing or swearing another act is performed, which is a performative enunciation, or what one does *by* believing or swearing an oath.

This act is at once constative, declarative, assertive and promissory, imbued with an illocutionary and commissive force that shares with the speech act the fundamental characteristic that a speaker cannot perform them without attempting to let the addressee know they are doing so. There is in the illocutionary enunciation the acknowledgement by the interlocutor of the speaker’s intention to perform the illocutionary act. A large number of enunciations are understandable only if one recognises the speaker’s explicit intention to bring the receiver to a certain type of conclusion, in a kind of self-implication that recalls the instance of discourse and its self-referential character.⁹³ Similarly, in an analysis that conjoins intention and meaning in a way that is highly remi-

niscent of Husserl's phenomenology, one cannot question someone or give them an order without at the same time seeking to let them know that they are the object of a question or an order.

Not only the performative enunciation, but also a constative enunciation takes on an illocutionary force, underscored by speech acts theorists. It provides the 'direction of fit',⁹⁴ which creates a reason for the speaker precisely in the form of belief or consent to do what they commit to doing.⁹⁵ Similarly, the acts of faith, believing and swearing commit the believer and swearer to a particular course of action. If faith, trust, belief, oath, confidence and credence take on this illocutionary force of speech acts, we may extrapolate *how to do things* with 'beliefs' and 'oaths', and then agree that believing, swearing, having faith and lending credence and credibility to anything is likely to make it exist.

The essentially open-ended character of the acts of believing and swearing, whether they are verbal utterances or ritualised behaviours, in other words the necessary relation to their own communication, makes it hard not to consider them as an integral part of the meaning of the enunciations by which they are performed. In this way, they become internal to the feeling of trust, faith and confidence, presented as creating an obligation to act. Like the performance of any illocutionary act, the profession of faith, the statement of belief and the swearing of an oath are inherently a performative act. This implies that an integral part of this meaning is a qualification of the events constituted by the very appearance and enunciation of faith, belief and oath, as they manifest themselves particularly in judicial proceedings, trade affairs and religious practices.

The statement of an act of faith and oath oscillates between the active meaning of trust, such as in extending confidence, giving credit or lending credence, and a passive meaning, such as in inspiring trust or confidence (being credible, worthy of trust or credit, reliable). This value determines a relationship of reciprocal recognition between subjects within a moral community of speech, which orients the credit or confidence either in an active direction (the credit and confidence I extend) or in a passive direction (the credit or confidence I enjoy or deserve). Underlying these two directions is the essential idea that faith and oath reproduce the complementary and asymmetrical terms of an exchange relationship between subjects who are variously concerned by the issues at stake, between the one who gives his word and swears his oath (or inspires credit and confidence) and the one who receives them (or extends credit and confidence). Benveniste was careful to note that the active meaning of faith, trust and belief is on the side of the receiver.⁹⁶ The word given and the oath sworn engage a relation between the faithfulness of the one and the faith and belief of the other. In giving one's word of faith and swearing one's oath, one gives one's own being to recognition.

These observations following the theoretical considerations of speech acts may show that one cannot swear by giving or taking an oath, and neither can one have faith or put confidence in someone, or simply trust, that is, give credit or credence to, without seeking to establish a relationship of mutual fidelity with the other.⁹⁷ Giving credence necessarily implies recognising the

intention of the believer, speaker, oath-swearer or creditor to perform a given act of faith and an act of oath. Agamben referred to a supposed ‘ethical relation that is established between the speaker and his language’,⁹⁸ rather than to an operation at work in this act that installs a social relation of the believer to their word, in the sense of the thrust to include within its scope the social and moral community of speech, which is committed to and addressed in the act of faith and oath. The link between the speaker and their word is created as far as such word is uttered in ‘the direction of fit’ to the community of speech.⁹⁹ Only in this direction, the speaker swearing an oath engages to pronounce and redefine their own being by what they say and what they commit to doing. This is what creates the bond, not to their language as Agamben believed, but to their moral community of speech build on exchange communication of faith and trust.

It can be argued that by the very fact that the oath and belief are given and received, the acts of faith, confidence, credit or credence have a perlocutionary value, which is what one produces *by* the fact of believing or swearing insofar as this can act upon others. This means that these events appear as perlocutionary acts, which create something fundamentally juridical, producing both a new obligation that did not exist before and a new transformation of the situation and identity of the exchange partners of faith, belief, oath and trust. New political, juridical and religious relationships are created, which remind social partners of the obligations freely taken, thus becoming essential in binding the mind and bending the will.

Surprisingly, Agamben’s typical circular argumentation is merely concerned with specifying the meaning and function of the name of God in the oath. He supposed that it ‘suspends and puts in parentheses every meaning in order to affirm through a pure experience of speech a pure and bare existence’, which is ‘something that cannot be signified but only sworn’, that is, affirmed as ‘the certainty of the name (of God)’.¹⁰⁰ In turn, in Rome as in the Old Testament, reliability, loyalty and faithfulness appear at the forefront. In all cases, there are the social forms of recognition that enable analysis of this type of trusting as a perlocutionary relationship expressed by the notion of faith, belief and oath, which laid the personal basis for a social bond and served to express all forms of faithfulness: between humans and toward the gods. It was like a pact made with oneself, with others or with God, which implied faithful observation of social convention and fidelity to one’s commitments.

As beliefs cannot be observed directly,¹⁰¹ the acts of believing and swearing engage one’s credence in an act of faith towards a god, in which something very valuable is put at stake, a sacrifice of material kind or even one’s own life, but with the expectation of something in return, that is, specifically to obtain that god’s support. Similarly, having confidence and extending credit is always because one believes or agrees that certain conditions may be fulfilled. Faith guides confidence, but it does so on the basis of firm beliefs, that is to say beliefs underpinned by illocutionary forces.¹⁰²

In all cultic relations between the humans and the gods there is an initial contract in which one can always distinguish between the offerings humans

address to the gods and the omens the gods send to humans. These two movements flow in opposite directions, from the humans to the gods and from the gods to the humans,¹⁰³ which are present together and which define two complementary fields of the reciprocity exchange. As Dumézil clearly showed in the Roman tradition, *fides* occupied a twofold domain, one that was almost mystical and religious and the other fully juridical and marketable.¹⁰⁴ This is because, in Rome, acts of worship, and principally sacrifice, were binding acts of exchange, the execution of trade contracts between the humans and the gods. The *sacra* necessarily found their extension in the *auguria* or the *signa*.¹⁰⁵ Their automatic nature was less a magical and religious than a juridical matter and trade affair. They were constraining, like a pact, or at least like the kind of implicit pact studied by Marcel Mauss in his essay on *The Gift*, revealing the forms and functions of exchange in archaic societies.¹⁰⁶ This is the *Gift* received and returned later in Lévi-Strauss's elaboration of a more general principle of reciprocity exchange and social communication.¹⁰⁷

The question here is not to 'establish an essential connection between God and the oath, making of the latter the very word of God', as Agamben believed in an irresistibly wishful thinking to draw human language and God into the sphere of the oath. It is not in the oath that 'human language communicates with that of God', and 'if God is the being whose words are oaths', the question is not to decide whether 'God is reliable because of the oath or if the oath is reliable because of God'.¹⁰⁸ Much more simply, the illocutionary force of any performative speech act in human language is both the model and the instrument of that general principle of reciprocity exchange and social communication which may also include metaphysical communication between humans and gods as social exchange partners.¹⁰⁹

Agency, reciprocity exchange and modes of religiosity

As mentioned above, an earlier work, published a decade before Agamben's *Sacrament of Language*, had already put productively to a new use Benveniste's etymologies of Indo-European concepts like religion, faith, belief, and oath.¹¹⁰ The linguistic and anthropological arguments are further taken up in a comparative discussion of social, moral, legal and religious values and understandings.¹¹¹ They demonstrate again how the conceptual unity of religious, moral, legal, and political community of speech, faith, oath, honour and kinship is restored in the workings of Albanian culture and society.¹¹² Overall, a morphodynamic explanatory model is proposed in which religion, law, politics, morals, communication and social relations demonstrate how systems of conceptual distinctions are reorganised and how doctrinal and ideological apparatuses are renewed. In particular, the ways in which Benveniste's investigations are further grounded into the theoretical considerations of speech acts and structural anthropological assumptions also paralleled in many ways both critical and cognitive approaches to religion.

On the one hand, critical scholars of religion argued that genuinely religious people, 'those who believe in God, and genuinely have faith in Him',

adopt an attitude of faith that is ‘deeply personal, dynamic, ultimate, [in] a direct encounter relating one ... to the God of the whole universe and to one’s Samaritan neighbor, that is, to persons as such, oblivious of the fact that they be outside one’s organized religious community’.¹¹³ Whether the content of this relationship is empty or not, both a metaphysical relation to God and an abstract ethical relation to other human beings are how faith articulates religiosity as a pattern of reciprocity exchange.

On the other hand, cognitive scholars in the anthropological project to explain religion argue that the concept of agency and the principle of reciprocity exchange are among the most critical evolved expectations that generate strategic inferences in terms of religious concepts and representations.¹¹⁴ This view parallels in many ways the theoretical argument of speech acts according to which they turn out to be illocutionary forces that engage nonhuman agents as social exchange partners.¹¹⁵ Ultimately, this is clearly worth thinking about and acting upon, in the sense that divine agents are summoned into existence by means of illocutionary forces as they manifest themselves in acts of belief, oath and faith.

Cognitive approaches delineate two distinct modes of religiosity, namely imagistic and doctrinal forms of memory formation grounded in universal features of the human mind, but distinguished primarily by either ritual or textual practices that can be specified as being culturally and historically embedded.¹¹⁶ The imagistic mode is associated with small-scale exclusive religious groups and is characterised by infrequently performed and highly arousing rituals, such as various initiation rites and rites of passage that promote intense relational bonds and identity fusion, binding together members of local religious communities. In contrast, the doctrinal mode is associated with inclusive imagined communities and is characterised by frequently performed and usually routinised rituals, such as the daily recitations of sacred texts, which tend to promote diffuse trust and cooperation with larger communities as found in the major world religions.

The cognitive memory systems of codification, transmission and sociality found in these distinct modes of religiosity can explain the causal interconnections between certain kinds of religious beliefs and certain patterns of social morphology. This perspective parallels in many ways morphodynamic analysis, arguing that religions tend to evolve in a transformational relationship of two opposed theological, organisational and political systems.¹¹⁷ The morphodynamic approach is grounded in the structural analysis of both political and religious functions of cultural products and social institutions like kinship and myth, which was for Lévi-Strauss central to the study of mental mechanisms and cognitive processes.¹¹⁸ Lévi-Strauss’s assumptions about mind and cognition are not rooted in ideas of selection and adaptation of static cognitive devices, information-processing or domain-specific modules, but rather in notions of self-organisation and self-regulation of dynamic systems and networks.¹¹⁹

On these grounds, it has been argued that internally consistent isomorphic relations of invariance based on morphodynamic and morphogenetic trans-

formations must be assumed to characterise religion, which can be conceptualised as a twofold phenomenon, deriving from two separate, opposed but complementary processes in the very workings of theological, organisational and political systems.¹²⁰ The transformational oppositions are distinguished primarily by either hierarchical conceptions of divinity and loosely defined charismatic groups, or else unified conceptions of divinity and ordered religious communities, which correspond to the political functions of liberation theology and orthodox conservatism respectively. Ultimately, the transformational oppositions show the politically ambivalent character of religion in support of either order-questioning ideologies or socio-cultural orderings.

Agamben's state of exception

Agamben's description of the oath at the intersection point between religion and law made it the foundation of the political pact in Western history, while his inquiry on the decline of the oath in our times was thought as a potential opening for new forms of political association.¹²¹ In his own words, 'religion and law do not preexist the performative experience of language that is in question in the oath, but rather they were invented to guarantee the truth and trustworthiness of the *logos* through a series of apparatuses (*dispositivi*), among which the technicalization of the oath into a specific sacrament, the "sacrament of power", occupies a central place'.¹²² Following Foucault, Agamben could not help but see the oath as putting the present into question.¹²³ He nevertheless offered little suggestion as to how to avoid the technical apparatuses that lead first to oath, and then to religion, law and politics. It is also not clear whether he saw the originary relation of the oath to the law and religion as potentially reinvigorating current politics,¹²⁴ or rather being implicated in the oppressive forces of the state of exception in the current post-modern condition.

Agamben recognised instead a certain impotence of language, which in the experience of the oath always includes what it excludes, that is, swearing and perjury, blessing and curse, worship and blasphemy. At the same time, he did not abolish what he considered as the paradox of the oath. He rather called upon a certain philosophy aimed 'to safeguard the performative experience of speech' and break down the institutional dispositives that are developed to deal with the problem of the 'vanity of speech', as the oath is taken in a 'specific sacrament of power'.¹²⁵ When the 'connection that unites words, things, and human actions is broken, Agamben claimed, this in fact promotes a spectacular and unprecedented proliferation of vain words on the one hand and, on the other, of legislative apparatuses (*dispositivi*) that seek obstinately to legislate on every aspect of that life on which they seem no longer to have any hold'.¹²⁶

Agamben believed a multiplicity of technico-mediatice dispositives have actually led to the eclipse of the oath, 'in which the name of God breaks away from its living connection with language and can only be uttered in vain'.¹²⁷ In these conditions, he already concluded, 'there is the living being more and more reduced to a purely biological reality and to bare life', while 'anything like a political experience becomes more and more precarious'.¹²⁸ Despite his

acclaimed erudition, this conclusion on the fate of bare life and ‘accursed’ *homo sacer*, which Agamben espoused again to return to political precariousness, is found disappointing and self-contradicting. It ‘discursively duplicates the very violence it describes without offering any compelling theoretical or political alternatives’, ‘precisely because he has committed himself to giving an archaeology for which *homo sacer* is his chosen figure—to which he has fatally committed his analysis’.¹²⁹

In contrast, Benveniste showed rigorously how the vocabulary terms that denote belief, faith and oath became semantically specialised and adopted what we know as ‘religious’ meanings, at the cost of profound transformations that occurred in the context of Latin Christianity and the early modern Christian West.¹³⁰ It can be argued that his argument might have anticipated the cognitive claims that religious concepts and representations are constructed out of the very same evolved mental predispositions, social livings, information exchanges and inferential processes as non-religious beliefs and practices. At the same time, we may say that Benveniste also anticipated the claims of critical scholars of religion who argue that in many contemporary contexts, the concept of religion is fundamentally shaped by Christian assumptions and that religion is a modern Western invention.

From the perspective of evolutionary cognitive approaches, religion cannot be a single homogenous thing and does not require a separate explanation from politics at all. The very quest for ‘religion’ is in itself misguided and misleading as a product of the Western ethnocentric historical and cultural perspective.¹³¹ Similarly, critical scholars of religion urge us to study its ‘contingent political creation’ and its ‘historicisation’ in the context of the emergence of modern liberalism, while they argue that an independent ontology for ‘religion’ is a protective strategy ‘deployed by dominant powers to ensure their continued influence over others’.¹³²

The arguments about religion as an ideological attempt, which is adopted, naturalised, reified, and elevated to an analytic category by specific social actors enacting and policing divisions, may also explain why both believers and scholars like Agamben make the claims that they do. Their definition of religion is linked normatively to legal processes, authority and knowledge, which provide meaning, in relation to practices and institutions, at different locations in the world and at different times in history, to achieve strategic goals, aimed at producing, reproducing, negotiating and contesting discriminate meanings and hierarchical positions in the world.¹³³

An important historical, ideological and constitutional function of religion is now claimed in the universalising abstraction and construction of liberal modernity. The apparently neutral descriptive terms of religion, culture, law and politics are increasingly argued as power categories, or ‘acts of cognitive imperialism’, which in dialectical interplay construct our apprehensions and shape the formation of the secular that is part of the ‘mystifying project of Western imperialism’.¹³⁴ In particular, the practice of categorising a particular ‘bundle of behaviours’ under the rubric of religion is argued to reproduce

social formations and normative narratives overdetermined by modern political liberalism, capitalism and colonialism.¹³⁵ Therefore, religion cannot be consigned *a priori* to a sphere apart from the realm of power but it is aptly seen as a product of particular power regimes.¹³⁶ More to the ground, as shown in the case of Bektashism, as it evolved either in Ottoman Anatolia and modern Turkey,¹³⁷ or in interwar and post-communist Albania,¹³⁸ the political role of the doctrinal system and the organisational structure of religion is revealed in the dynamic political process of actual social and historical situations.¹³⁹

Against this scholarship background, which he ignored, Agamben only advanced what can be seen as a kind of messianic practice of philosophy. He supposed it to begin in the moment in which the speaker resolutely puts in question the primacy of names, after Plato renounced the idea of an exact correspondence between the name and the thing named, and drew together onomastics and legislation as an experience of *logos* and politics.¹⁴⁰ In Agamben's own words, 'philosophy is, in this sense, constitutively a critique of the oath: that is, it puts in question the sacramental bond that links the human to language, without for that reason simply speaking haphazardly, falling into the vanity of speech'.¹⁴¹ In a moment when Agamben sees all condemned to 'swear in vain' and when politics can only assume the form of a 'governance of empty speech over bare life', he firmly believed in philosophical obfuscation and mystification. Above all his own philosophy 'must necessarily put itself forward as *vera religio* [true religion]',¹⁴² from which he drew the indication of a 'line of resistance and change' to recover the true experience of language.¹⁴³

Many of those who follow Agamben's work have been waiting for him to articulate an affirmative aspect, that is, 'his promised consideration of the forms of life that somehow might elude the otherwise intractable regime of modern biopower and the entire history of metaphysics on which it is based'.¹⁴⁴ Agamben, however, exaggerated a certain 'experience of language into a general condition', which might be both provocative and slippery, and he remained 'imprisoned in the theoretical constellation',¹⁴⁵ into which he coalesced the particular difficulty of his own 'philosophical prose' and 'rhetorical cast of mind'.¹⁴⁶ Eventually, after a supposed diagnosis of the longstanding ills of Western dispositions, rather than suggesting different forms of sociality and politics, he indulged to nothing more than a simple gesture of self-gratifying verbosity towards an abstract post-modern possibility.

Concluding remarks

Giorgio Agamben appeared at the turn of the twenty-first century as an emblematic figure in the current post-modernist condition, or what he himself used to characterise as a state of exception. His work is notable for bringing post-structuralist theory to bear upon the traditional disciplines of theology and classics.¹⁴⁷ To paraphrase one of his favourite watchwords, his writings do not so much affirm the verifiable truth of his statements, but in their originary mode, they are performative acts that create what they name.

Their originary performative aspect can be recaptured, just as adding oath to his own statements, without affecting their content but as they do so, they turn their utterance into a performative act. As he proposed in one of his favourite quotes about the oath, ‘the performative substitutes for the denotative relationship between speech and fact a self-referential relation that, putting the former out of play, puts itself forward as the decisive fact’.¹⁴⁸ Here Agamben, like a dog chasing its tail, seems to be swearing an oath of what is perhaps the right performative characterisation of his own speech vanity. Just as Agamben thought that language suspends its denotation in the performative, and the law suspends its own application in the state of exception in order to found its own being in force,¹⁴⁹ so Agamben suspends his statement precisely to found his own existential connection with such a thing as a state of exception in the current post-modernist condition.

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Notes

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21. Agamben, *The sacrament of language*, 15.
22. Ibid., 46.
23. Ernst Cassirer, *Sprache und Mythos, ein Beitrag zum Problem der Götternamen* (Leipzig/Berlin: Teubner, 1925).
24. Agamben, *The sacrament of language*, 20.
25. Ibid., 20–21.
26. Pufendorf’s statement actually read as simply as *quod iurejurando non pacta solum, sed et simplex sermo soleat confirmari* ‘the custom of swearing is used for the establishment and security, not only of covenants, but of bare assertions’ (*Law* IV.II.1), which is deliberately altered in Agamben as ‘the custom of swearing is used for the establishment and security not only of covenants, but of language itself’ Agamben, *The sacrament of language*, 5., alteration acknowledged.
27. Tell, *Philosophy & Rhetoric*.
28. Agamben, *The sacrament of language*, 69.
29. Ibid., 15.
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31. More adequately quoted in Cassirer, *Sprache und Mythos*, 5.
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44. Clemens, "Oath, torture, testimony," 89.
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